

# FISCAL NOTE

**Bill #:** SB0394

**Title:** Party awarded costs in most civil actions entitled to attorney fees

**Primary Sponsor:** Perry, G

**Status:** Third Reading

Sponsor signature	Date	Chuck Swysgood, Budget Director	Date
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## Fiscal Summary

	<b><u>FY 2004 Difference</u></b>	<b><u>FY 2005 Difference</u></b>
<b>Expenditures:</b>		
General Fund	Unknown	Unknown
<b>Revenue:</b>		
General Fund	Unknown	Unknown
<b>Net Impact on General Fund Balance:</b>	Unknown	Unknown

- |   |   |
|---|---|
| <input type="checkbox"/> Significant Local Gov. Impact    | <input type="checkbox"/> Technical Concerns                       |
| <input type="checkbox"/> Included in the Executive Budget | <input checked="" type="checkbox"/> Significant Long-Term Impacts |
| <input type="checkbox"/> Dedicated Revenue Form Attached  | <input checked="" type="checkbox"/> Needs to be included in HB 2  |

## Fiscal Analysis

### ASSUMPTIONS:

1. If SB 394 passes, the state will pay attorney fees to plaintiffs in many cases including environmental challenges and tort claims.
2. The number of cases and the precise dollar amount is difficult to calculate because some of the increased cost will be added to the amount for which the cases are settled.
3. The number of cases filed against the state will probably increase. The bill will increase the settlement amount of certain cases where liability is reasonably clear, because attorney fees will most likely be added into the value of those cases.
4. The bill is not practically reciprocal, because the state will always pay fees when it loses, but plaintiffs will not, in part because plaintiffs will often be incapable of paying.
5. Additionally, the Montana Supreme Court has ruled that attorneys' fees are not recoverable by the state for work done by salaried state lawyers because no additional burden has been placed on the state [Northern Border Pipeline Company v. The State of Montana, 237 Mont. 133 (1998)].
6. It is difficult to predict the effect of the bill and quantify the fiscal impact. The impact could be significant..

**Fiscal Note Request SB0394, Third Reading**  
(continued)

LONG-RANGE IMPACTS:

1. The long-range costs could exceed \$1 million per year.
2. State agency budgets will need to be increased accordingly. Agency budgets for insurance have increased from \$8,056,480 in FY 2002 to \$15,452,767 in FY 2005. Due to revenue shortfalls, these increases are being absorbed by reductions in most agencies.
3. The Tort Defense fund will likely require additional general fund loans. To keep up with the current cost increases, there was a general fund loan of \$4.7 million in FY 2002 and a general fund loan of \$6 million in FY 2003.